

Internal Revenue Service

memorandum

CC:EL:GL:Br1:DMGrogan

GL-115431-97

date: FEB 12 1998

to: Director, Office of Special Procedures CP:CO:C:SP

from: Chief, Branch 1 (General Litigation) CC:EL:GL:Br1

subject: Effect of the 21-Day Interest-Free
Period on Filing of the Notice of Federal Tax Lien

You requested General Litigation's views on the effect of the 21 day interest-free period on the filing of notices of federal tax lien. You have indicated that you have received a number of questions from the field on this question and have advised the field that the interest-free period has no bearing on the time frame in which a notice of tax lien can be filed. We note that our office has also received several requests for informal advice on this issue. 1/ We conclude that the 21 day interest-free period does not apply to the lien and levy provisions contained in Chapter 64 of the Code. This notwithstanding, [REDACTED]

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Section 303 of the Taxpayer's Bill of Rights II (TBR II) amended I.R.C. § 6601(e) to provide that no interest will be imposed if the amount due is paid within 21 calendar days from the date of notice and demand, or 10 business days if the amount shown on the notice is \$100,000 or more. 2/ I.R.C. § 6321 provides that if a person refuses or neglects to pay after demand for payment, the amount owed will be lien on all of the person's property. This section does not provide a

1/ Specifically, the questions have centered on the issue of the significance of the "pay by" date indicated on the balance due notices provided to taxpayers.

2/ Prior to the enactment of TBR II, section 6601(e) provided for a 10-day interest-free period, regardless of the amount owed.

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However, we believe that this may not be the case where the balance due notice provided to the taxpayer has stated that the taxpayer has 21 days to pay. We understand that the service centers have revised first balance due notices to state that taxpayers have 21 days to pay. 5/ One could argue that the time indicated on the notice relates only to the time frame during which the taxpayer has the opportunity to incur no further interest charges. The fact that I.R.C. § 6321 does not state any particular time after demand with respect to the taxpayer's refusal or neglect to pay lends support to this argument. On the other hand, we note that I.R.C. § 6155 provides:

Upon receipt of notice and demand from the Secretary, there shall be paid at the place and time stated in such notice the amount of any tax . . . stated in such notice and demand.

Thus, while I.R.C. § 6321 provides no specific time, I.R.C. § 6155 does implicitly require that notices provide a stated time for payment.

The applicable Code sections, the relevant legislative history, and the regulations under the statutory provisions 6/ do not answer the question of the significance of the date indicated on balance due notices--does it relate to the interest-free period, the lien and levy provisions, or both. As we stated earlier, there is nothing which requires that the ~~Service treat the interest-free period time frame as the time~~ frame for lien/levy purposes. However, the balance due notices provided to taxpayers must clearly delineate the different time frames, if any. If there is only one date indicated on the notice, it is reasonable for taxpayers to believe that is the date that relates to the interest-free period and that triggers the lien and levy provisions.

5/ When we were contacted informally regarding what language should be used on balance due notices, we concluded that the best approach would be to state that time frame for the interest-free period and the time after which the Service could take further collection action.

6/ In addition, we have reviewed the Treasury Decisions files on the Treasury Regulations--those which we were able to retrieve from within the National Office and some of those ~~located in the Federal Records Center.~~ Review of these files did not shed additional light on the matter.

Please clear any instructions to the field on this matter through this office before issuance. If you have questions concerning the foregoing, please contact Deborah Grogan at 622-3610.

Michael R. Anar

ALAN C. LEVINE